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Supreme Court of the United States

OCTOBER TERM, 1954

No. 200

THE TEXAS COMPANY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

and

CATHERINE BODE, as Admx., etc., *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOHN C. CRAWLEY,
Counsel for the Petitioner.

THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD,
72 Wall Street, New York City.

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THE TEXAS COMPANY

Petitioner,

vs.

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Respondents.

PETITION

Your petitioner, The Texas Company, prays for a writ of certiorari to review two judgments of the United States Court of Appeals for the Second Circuit in a limitation of liability proceeding in admiralty, each dated and filed May 26, 1954. One judgment reversed an order of the Honorable Sylvester J. Ryan and the other judgment affirmed an order of the Honorable Edward Weinfeld, both on appeal from the United States District Court for the Southern District of New York.

The opinion of the Court of Appeals has not yet been officially reported, but a copy thereof is appended hereto. Both appeals were argued and considered together because both involved applications to set aside or modify the injunction of the District Court in the limitation proceeding. Accordingly, both appeals are dealt with in this petition.

The transcript of the record below with respect to Judge Ryan's order will be referred to by its color, "blue", and that of Judge Weinfeld's order, by its color, "gray".

The opinion of Judge Ryan also has not been officially reported. A copy thereof is printed in the Blue Record (pp. 31-32). The opinion of Judge Weinfeld is reported in 116 F. Supp. 915 (1953), and a copy thereof is printed in the Gray Record (pp. 67-72).

Jurisdiction to review these judgments by writ of certiorari is based upon Title 28 U. S. C., Sec. 1254.

Applicable Statutes

The petition for limitation of liability was filed under Title 46 U. S. C., Secs. 183 *et seq.*, and United States Supreme Court Admiralty Rules 51 through 55, the texts of which are printed in the appendix.

Questions Presented

1. Whether, after a limitation of liability proceeding has been properly instituted pursuant to the limitation statute and the admiralty rules of this Court, and twenty-one of approximately forty-one known potential claimants have filed sworn claims therein exceeding the appraised value of the vessel and her pending freight, seven claimants who filed claims can, as to their claims, circumvent the mandate of the statute and rules of this Court against the prosecution of separate suits by filing a stipulation purporting to reduce the damages demanded by them for the sole purpose of bringing the total amount of the filed claims below the appraised value of the vessel.

2. Whether, in such a situation, the admiralty court may modify the injunction against separate suits, disregarding twenty known potential claimants who have not yet filed

their claims and whose time or right to file claims has not yet been barred, especially in view of the provision of Section 185 of Title 46, U. S. C., which requires that the proceeding be instituted within six months after first written notice of claim.

Statement of Facts

On November 14, 1952, the destroyer *USS Ruchamkin*, one of eleven vessels of a Naval task force engaged in amphibious training maneuvers, collided with the petitioner's tanker, *Washington* about sixty miles at sea off Cape Henry, Virginia. Seven military personnel on the *Ruchamkin* were killed and thirty-two injured. A seaman on the *Washington*, the lookout, also was injured. Both vessels were seriously damaged (Gray Record, pp. 5, 6, 7).

Eight separate suits in behalf of some of the injured and representatives of deceased personnel alleging damages in excess of $1,240,000 were subsequently filed against The Texas Company in the United States District Court for the Southern District of New York (Gray Record, pp. 14, 15).

The United States of America, as owner of the *USS Ruchamkin*, also filed a libel in the United States District Court for the Eastern District of Virginia, at Alexandria, to recover $800,000 damages to the *Ruchamkin*, and additional undetermined sums it would be required to pay for hospitalization, pensions and other benefits to the injured and next of kin of deceased personnel (Gray Record, p. 15). Although entitled *in rem* and *in personam*, process *in personam* only was served upon The Texas Company in Alexandria, Va. (Gray Record, p. 35). Process *in rem* was never served, and the *SS Washington* was never attached before the filing of the limitation petition.

On April 17, 1953, it being apparent that the nine separate suits claiming damages in excess of $2,040,000 then

on file against it, together with the potential claims, would exceed the value of the *SS Washington* and her pending freight, a petition for exoneration from or limitation of liability, pursuant to 46 U. S. C., Secs. 183-189, was filed by The Texas Company in the United States District Court for the Southern District of New York, its principal place of business being in the Borough of Manhattan, City of New York, within that District (Gray Record, pp. 5-18). Simultaneously, the petitioner also filed an *ad interim* stipulation for value in the amount of $2,109,957.58. And on the same day, the District Court issued the usual injunction enjoining all suits against the petitioner except in the limitation proceeding. The monition also issued by the Court was made returnable June 2, 1953 (Blue, Gray Records, pp. 19-21).

About ten days prior to the return date of the monition, and before filing a claim or answer in the limitation proceeding, the Government, appearing specially, made the first motion (Gray Record, pp. 22-29) in the United States District Court for the Southern District of New York for an order modifying the injunction and for permission to proceed with its aforementioned suit previously instituted in the United States District Court for the Eastern District of Virginia, at Alexandria, which was enjoined by the restraining order in the limitation proceeding (Gray Record, pp. 22-29). At the same time, in a companion motion to the first, the Government applied for an order directing the transfer to Alexandria, Va. of two admiralty libels theretofore filed by The Texas Company against the Government in the Southern District of New York to recover for the *Washington's* damages. The appeal from the order of Judge Weinfeld granting the latter Government motion to transfer The Texas Company libels was dismissed by the Court of Appeals as not appealable. Although mentioned in Judge Weinfeld's opinion, that motion is, therefore, not involved herein.

Both of the Government's motions were argued before Judge Weinfeld on May 26, 1953. On June 2, 1953, the return day of the monition, the Government, again appearing specially and without prejudice to its rights under the motions filed a claim and an answer in the limitation proceeding (Gray Record, p. 2). On the return of the monition, out of forty-one potential claimants, twenty-one claims aggregating more than $2,225,180 had been filed in the limitation proceeding (Gray Record, pp. 41, 42). The total of such claims filed accordingly exceeded the value of the *Washington* and her pending freight by more than $115,000 (Gray Record, pp. 41-42; 60). Twenty of the military personnel on the *Ruchamkin* reported by the Navy to have been injured have not as yet filed claims (Gray Record, p. 61; Blue Record, pp. 22, 23).

Every claimant (including the Government) who has filed an answer to the petition has denied the right of the petitioner to limit its liability.

The second motion (Blue Record, pp. 24-26), which was made by only eleven of the twenty injury and death claimants who had filed claims in the limitation proceeding, came on for argument before Judge Ryan, United States District Judge for the Southern District of New York, on September 15, 1953. Upon learning, during the argument, that notwithstanding the reduction of damages claimed in suits filed previous to the petition, the aggregate of the sworn claims filed still exceeded the value of the *Washington* and her pending freight, counsel for the eleven injury and death claimants requested the Court to withhold decision on the motion and grant them additional time to re-examine their claims and consider further reducing the amounts claimed by them in order to bring the total of the claims filed (exclusive of potential claims not yet filed) below the amount of the *ad interim* stipulation.

In an opinion dated October 16, 1953, Judge Ryan denied the claimants' motion, holding that "the venue of this

limitation proceeding has been properly laid and the restraining order was proper" (Blue Record, p. 32). He further held that any subsequent reduction of their claims would not affect the Court's jurisdiction and it would serve no useful purpose to withhold decision on the motion, pending the filing of additional stipulations of reduction by those claimants (Blue Record, p. 32).

They accordingly appealed from Judge Ryan's order on November 30, 1953 (Blue Record, p. 35).

On December 4, 1953, while the first above-mentioned Government's motion was still under advisement, and more than six months after the Government's motion had been argued, on inquiry of the District Judge, Washington counsel for the Department of Justice sent him a telegram purporting to reduce the Government's sworn claim for damage to the *Ruchamkin* in excess of $800,000 to $601,833.93 (Gray Record, p. 57). The petitioner promptly objected to consideration of that telegram, submitted for the obvious purpose of accomplishing what Judge Ryan had refused to permit the other claimants to do (Gray Record, pp. 62-64). Petitioner also called the Court's attention to the fact (Gray Record, pp. 58-61) that the potential claims of the twenty military personnel were outstanding and not barred by any statute of limitation or otherwise.

On December 9, 1953, Judge Weinfeld, in a written opinion, granted the Government's motion and modified the injunction so as to permit the Government to proceed with its libel previously filed in Alexandria, Va. (Gray Record, pp. 67-72), reserving and restraining all other issues and matters in the limitation proceeding in the Southern District of New York.

About seven weeks later, on January 26, 1954, and without notice to petitioner, a unilateral stipulation signed by proctors for six of the injury and death claimants and for

the Government, and purporting to reduce the amounts of their respective claims further by sums aggregating $470,846.07, was filed with the Clerk of the United States District Court for the Southern District of New York (Gray Record, pp. 4; 73-75).

On January 29, 1954, an order was signed by Judge Weinfeld modifying the injunction in the limitation proceeding, in accordance with his written decision of December 9, 1953 (Gray Record, pp. 76-79). The notice of appeal therefrom was filed by the petitioner on February 3, 1954 (Gray Record, p. 80).

The United States Court of Appeals for the Second Circuit heard argument on both appeals concurrently and in a single opinion (Gray Record, pp. 121-126), a copy of which is appended to this petition, it reversed the order of Judge Ryan and affirmed the order of Judge Weinfeld on the condition that a new stipulation be filed by the claimants herein.

On June 3, 1954, a new stipulation in compliance with the direction of the Court of Appeals, signed by the proctors (as distinguished from the individual claimants who had filed sworn claims), was filed in behalf of only seven of twenty-one claimants who have filed sworn claims in the limitation proceeding (Gray Record, pp. 136-138).

Argument in Support of Petition

The decision of the Court of Appeals for the Second Circuit in the case at bar is in direct conflict, on the basic issues involved herein, with the decision of the Court of Appeals for the Ninth Circuit in *Anderson, et al.* v. *Alaska S.S. Company* (9th Cir., 1927), 22 F. (2d) 532, which approved the action of the District Court for the Northern Division of the Western District of Washington in denying claimants' motion to dismiss the limitation proceeding and

dissolve the restraining order enjoining the prosecution of suits outside the limitation proceeding.

In the *Anderson* case, a shipowner, confronted with potential claims for breach of contract by 190 passengers transported under similar circumstances and conditions, petitioned to limit its liability with respect to such claims. Only 43 of the passengers had filed claims therein totalling $45,000. The value of the vessel and her pending freight was found to be $79,820.61.

It was urged by the claimants, in the District Court and in the Circuit Court of Appeals, that since the aggregate of the claims filed was less than the value of the vessel and her pending freight, the petition should be dismissed and the restraining order dissolved. Both the District Court and the Circuit Court of Appeals rejected their contention, holding that the probability at the time of the filing of the petition that the claims would exceed the value of the vessel and her pending freight conferred exclusive jurisdiction on the admiralty court. The issuance of the injunction in that case was upheld despite the fact that the aggregate of the claims then filed did not exceed the value of the vessel and her pending freight. The Ninth Circuit said, at page 534:

> "Nor is it material that the aggregate amount of the claims presented was less than the appraised value, because the right of limitation depends on the *probable* amount of the claims against the vessel at the date of filing the petition, not on the amount of the claims subsequently filed or allowed." (Italics supplied.)

See also:

> *The Material Service*, 11 F. Supp. 1006; aff'd 79 F. (2d) 280; cert. den. 296 U. S. 653 (1935).

In the case at bar, the Second Circuit, following its own previous decisions in *Curtis Bay Towing Co.* v. *Tug Kevin*

Moran, 159 F. (2d) 273 and *The Aquitania,* 14 F. (2d) 456; aff'd 20 F. (2d) 457, has held that although the claims actually filed exceeded the value of the vessel and her pending freight, not including the twenty other potential claimants, the injunction may nevertheless be modified to permit some claimants to reduce their claims already filed, and then proceed with or institute suits in other courts outside the limitation proceeding.

There is, therefore, a conflict in these two important circuits which pass upon admiralty and maritime controversies as to the interpretation of the shipowner's right to an injunction against a multiplicity of suits, under the limitation statute and admiralty rules, in a limitation proceeding. Uniformity in the administration of the Limitation of Liability Act can only be achieved by this Court resolving that conflict. Unless it is resolved at this time, it will result in the deprivation of substantial statutory rights of shipowners, depending upon the particular forum or circuit in which a limitation proceeding must be instituted.

While this Court has frequently had occasion to interpret the limitation of liability statute, it has never passed upon the questions that have arisen in this proceeding, which are very important to the maritime industry trying to exist as it does in international competition with ships of other countries, thirty-two of which have adopted limited liability laws for the benefit of their own merchant ships. [See Maritime Law Association Document No. 196 (1935), p. 2026.]

Although these questions have not yet been passed upon by this Court, several decisions of this Court are contrary to the reasoning of the Court of Appeals of the Second Circuit in arriving at its decision. This fundamental difference in treating the problem will be discussed below.

A. Effect of Reduction of Claims on Exclusive Jurisdiction of Admiralty Court in a Limitation Proceeding.

In refusing to permit the moving claimants to reduce their claims for the sole purpose of lowering the total below the amount of the *ad interim* stipulation, Judge Ryan followed the undisputed judicial precedents.

The first of these, *The Tolchester,* 42 Fed. 180 (D. C. Md., 1890) involved a limitation of liability proceeding. In their claims filed in that proceeding, claimants, as in this case, had reduced amounts asserted as damages in suits previous to the limitation proceeding in order to bring their claims below the *ad interim* stipulation filed in the United States District Court. In holding that the Federal Court had exclusive jurisdiction and that the subsequent reduction in the amount of the damages claimed could not deprive it of that jurisdiction, the Court said, at pages 182, 183:

> "That fund could not be withdrawn without the consent of all interested; and whether or not the court is entitled to retain that fund, and to exercise the jurisdiction invoked, must be determined by the facts existing at the time it was placed in the court's control. If at that time the court's jurisdiction was properly invoked, and it was then the duty of the court to keep it, and to adjudicate all the questions as to its distribution, it does not seem possible that the jurisdiction could be divested by the subsequent reduction of the damages claimed in the suits in the state courts. The libelant had acquired a right to have this court proceed with the case, and this court cannot now refuse to do so. Cooke v. U. S., 2 Wall. 218; Mollan v. Torrance, 9 Wheat. 537."

This opinion was followed by Judge Adams of the Southern District of New York in the *John K. Gilkinson*

(S. D. N. Y., 1907), 150 Fed. 454, another limitation proceeding. He summarized the rule at page 457 when he said:

> "But in any event, when a court once acquires jurisdiction in a matter of this kind, it cannot be divested of it by any act on the part of the plaintiff in attempting to reduce his claim. The Tolchester (D. C.) 42 Fed. 180."

An analogous situation is presented in removal cases in the Federal Court. This Court has specifically held in such cases that:

> "Events occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction. * * *
>
> "And though as here, the plaintiff after removal, by stipulation, by affidavit, or by amendment of his pleadings, reduces the claim below the requisite amount, this does not deprive the district court of jurisdiction."
>
> *St. Paul Mercury Indemnity Co.* v. *Red Cab Co.*, 303 U. S. 283, 284-290, 292, 293 (1938).

In its opinion in the case at bar, the Court of Appeals for the Second Circuit failed to discuss the applicability of *The Tolchester, Gilkinson* and removal cases on the issue of the subsequent reduction of claims to divest the admiralty court of its exclusive jurisdiction.

It is respectfully submitted that a determination by this Court of the effect of a subsequent reduction of claims on the exclusive jurisdiction of the Admiralty Court is essential and desirable to the proper administration of the limitation of liability statute.

B. Regardless of the Effect of the Subsequent Reduction of Claims, Does the Fact That There Are Other Potential Claimants in Addition to Those Who Have Already Filed Claims Require the Admiralty Court to Exercise Exclusive Jurisdiction Over the Entire Controversy?

This limitation proceeding arose out of a serious maritime disaster which is reported to have caused the death of and injury to at least 40 persons, in addition to extensive damage to both vessels.

One of the basic purposes of the statute and the Supreme Court Admiralty Rules was to provide a single forum for trial and determination of the many controversies that arise out of such maritime disasters. This Court on several occasions has stated that one of the principal purposes of the statute is to protect shipowners from a multiplicity of suits brought by claimants as a result of an accident, with their attendant hardship, expense and conflicting results.

In *Maryland Casualty Company, et al.* v. *Gertrude Picard Cushing, et al.*, 347 U. S. 409; 74 Sup. Ct., 608, 611 (1954), Mr. Justice Frankfurter said of the Limitation Statute:

> "The legislation was designed to induce the heavy financial commitments the shipping industry requires by mitigating the threat of a multitude of suits and the hazards of vast, unlimited liability as a result of a maritime disaster."

And again at page 611:

> "The heart of this system is a concursus of all claims to ensure the prompt and economical disposition of controversies in which there are often a multitude of claimants."

In so stating this basic purpose of the statute, the opinion adhered to the doctrine as it had been enunciated in earlier decisions of this Court.

> *Providence and New York S. S. Co.* v. *Hill Mfg. Co.*, 109 U. S. 578, 594 (1883);
> *Hartford Accident & Indemnity Company* v. *Southern Pacific Company, et al.*, 273 U. S. 207 (1927);

In the *Hartford* case, Chief Justice Taft said, at pp. 215-216:

> "It is quite evident from these cases that this Court has by its rules and decisions given the statute a very broad and equitable construction for the purpose of carrying out its purpose and for facilitating a settlement of the whole controversy over such losses as are comprehended within it, and that all the ease with which rights can be adjusted in equity is intended to be given to the proceeding. It is the administration of equity in an admiralty court. Dowdell v. United States District Court, 139 Fed. 444, 445. The proceeding partakes in a way of the features of a bill to enjoin a multiplicity of suits, a bill in the nature of an interpleader, and a creditor's bill. It looks to a complete and just disposition of a many cornered controversy, and is applicable to proceedings in rem against the ship as well as to proceedings in personam against the owner, the limitation extending to the owner's property as well as to his person. The City of Norwich, 118 U. S. 468, 503."

The foregoing language should be contrasted with the following statement of the Court of Appeals in this case:

> "The purpose of the limitation proceedings is not to prevent a multiplicity of suits but, in equitable fashion,

> to provide a marshalling of assets—the distribution of an inadequate fund among claimants, none of whom can be paid in full."

It should be noted that the admiralty court will not relinquish jurisdiction over the proceeding should it be found that the petitioner is not entitled to limitation of liability.

> *Hartford Accident & Indemnity Co.* v. *Southern Pacific Co., supra.*

In such a situation there is no question of distribution of an inadequate fund, yet the admiralty court retains jurisdiction.

To avoid a multiplicity of suits, the Supreme Court, in promulgating its Rules of Admiralty Practice, carried out the intent of Sec. 185 of Title 46 U. S. C. by providing for the issuance of an injunction to restrain the prosecution of all claims except in the limitation proceeding. This injunction is an essential element of exclusive admiralty jurisdiction over limitation of liability proceedings. The modification or dissolution of the injunction to allow a few claimants to prosecute their suits independently of the limitation proceeding is in effect a relinquishment of that exclusive jurisdiction. Mere retention of the petition pending further events affords no relief to the parties and does not carry out the basic purpose of the statute and of the Rules mentioned above.

A right to a belated concursus is illusory. In the interim, for example, this petitioner may well have been subjected to as many as twenty trials in different jurisdictions of a complicated collision case involving twelve vessels, which, according to estimates of Government counsel, will necessitate calling 150 witnesses per trial (Gray Record, p. 70).

In twenty separate trials by twenty different courts, there are likely to be different results. Aside from the

expense involved, such procedure places an unnecessary burden on all concerned.

Only seven claimants have signed the stipulation filed in compliance with the condition imposed by the Court of Appeals. If some of the claimants in the limitation proceeding choose to remain and try their claims therein, as appears to be the case here (Gray Record, pp. 136-138), the petitioner will be obliged to proceed to trial with the limitation proceeding also.

It is petitioner's contention that the opinion of the Court of Appeals fails to give the limitation statute the liberal construction to which the shipowner is entitled.

Providence & N. Y. S. S. Co. v. *Hill Mfg. Co.*, 109 U. S. 578, 588-589 (1883);
Larsen v. *Northland Transportation Co.*, 292 U. S. 20, 24 (1934).

The exercise and retention of exclusive jurisdiction over the entire controversy by the admiralty court must be determined upon the facts as they exist on the date of the filing of the limitation petition.

Anderson v. *Alaska S. S. Co., supra;*

Also:

The Tolchester and the *John K. Gilkinson, supra.*

The Court of Appeals failed to give any weight to the outstanding potential claims in holding that the District Court should not retain exclusive jurisdiction of the entire controversy. It is manifestly unfair not to consider potential claims, since Sec. 185 of Title 46 U. S. C. requires the shipowner to file his petition within six months after receipt of written notice of claim or *waive* the benefits of

the statute, particularly as the claimants are under no similar compulsion to file suits within that same period. Hence, the propriety of the filing of the petition must be determined upon an examination of the facts of the maritime disaster and a consideration of the outstanding potential claims as well as any already filed within that six months period. The importance of the potential claims was stressed by Mr. Justice Frankfurter in *Black Diamond Steamship Corp.* v. *Robert Stewart & Sons, Ltd., et al.*, 336 U. S. 386, 393 (1949):

> "If the Court of Appeals' reliance upon the Aquitania, Curtis Bay Towing Co. v. Tug Kevin Moran, and The George W. Fields, supra, was, as we are convinced, under the circumstances misplaced, we escape its dilemma without wanting in respect for the wisdom of that most experienced of admiralty courts. Those cases, it is true, hold that where the aggregate claims against a shipowner *can by no possibility* exceed the value of his ship, a proceeding under R. S. § 4285 will not lie. But the value of the ship was relevant in those cases only because under the law of the United States, which was assumed to be applicable, that was the limit of the owner's liability. Since the total amount of all *potential* claims in each case was only a fraction of that limit, the fund available for their satisfaction was more than ample. There was no reason, therefore, for permitting the petitioners to invoke a forum concursus. But where, as here, the total amount of *potential* claims exceeds the fund available for their satisfaction, whether that fund be measured by the law of Belgium or of the United States, there exists just such a situation as R. S. § 4285 was designed to meet." (Emphasis added)

Prior to the Sirovich Amendment to the Limitation Act in 1936, shipowners frequently waited until the suits arising out of a maritime disaster proceeded to judgment, and

it became clear whether the aggregate of the claims would definitely exceed the value of the vessel and her pending freight, at which time they would file petitions for limitation of liability. To avoid the delays resulting from such action, Congress amended the Limitation statute in 1936 so as to require the filing of a petition within six months after receipt of first written notice of claim.

The action of the Court of Appeals in this case in modifying its injunction now, reserving the right to reassert its jurisdiction should subsequent claims bring the total above the limitation value, is in effect a return to the situation as it existed before the 1936 amendment, and to that extent it violates the purpose of the amendment. If the statutory amendment is to be given full effect, it would seem that the admiralty court should retain jurisdiction of the entire litigation and continue its injunction in all cases where the probable or potential claims at the time of the filing of the petition exceeds the value of the vessel and her pending freight.

The decision of the Second Circuit in this case is based upon *Curtis Bay Towing Co.* v. *Tug Kevin Moran* (2d Cir., 1947), 159 F. (2d) 273, and the *Aquitania,* 14 F. (2d) 456, affirmed (2d Cir. 1927), 20 F. (2d) 457. Those two cases involved factual situations wherein limitation petitions should never have been filed. There was in both cases a gross disproportion between the limitation fund and the total amount of the claims filed. Further, the court indicated in the *Curtis Bay* case that the possibility of additional claims was *so remote* as not to count in determining whether or not the District Court should exercise its exclusive jurisdiction over the entire controversy.

The single claim limitation of liability cases cited in the course of the Second Circuit's opinion in this case,

Petition of Moran Transport Corp., (2d Cir., 1950), 185 F. (2d) 386;

Petition of Red Star Barge Line, Inc., (2d Cir., 1947), 160 F. (2d) 436.

have no bearing upon the issue, since there was no possibility of a multiplicity of suits.

See also:

Langnes v. *Green*, 282 U. S. 531, 540 (1931); Ex parte Green, 286 U. S. 437 (1932).

Although the individual military personnel involved in this case, or their representatives, may have no right to sue the Government for damages suffered as a result of this collision (*Dobson* v. *United States* (2d Cir., 1928), 27 F. (2d) 807; cert. den. 278 U. S. 653 (1928); *Bradey Administratrix* v. *United States* (2d Cir., 1945), 151 F. (2d) 742, cert. den. 326 U. S. 795 (1945)), should the vessels of the petitioner and the Government be held to blame, under the decision of this Court in *The Chattahoochee*, 173 U. S. 540 (1899), the petitioner would be entitled to include as part of its damage claim against the Government the amounts which it would be required to pay to such injury and death claimants. Accordingly, the Government's suit in Alexandria, Va. cannot possibly be disposed of alone and apart from the others. Neither can it be concluded until the damage suits of all other claimants have finally been determined, presumably in different States where the military personnel are known to reside (Gray Record, pp. 41, 42). This fact, added to the many complicated issues of an involved admiralty collision case such as this, should, under any enlightened system of jurisprudence, be handled and tried by a single admiralty court admittedly having jurisdiction of all parties and the fund or res.

Conclusion

It is respectfully submitted that this controversy reflects a serious conflict between the Court of Appeals for the Ninth Circuit and the Court of Appeals for the Second

Circuit; that it presents an important question of construction of the Limitation of Liability Act that has not been decided by this Court; and, is of such general concern to the maritime industry as to merit review by this Honorable Court.

JOHN C. CRAWLEY,
Counsel for the Petitioner.

New York, N. Y.
July 8, 1954.

APPENDIX

Opinion of the United States Court of Appeals for the Second Circuit.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 222 and 266—October Term, 1953.

(Argued April 7 and 8, 1954 Decided May 26, 1954.)

Docket Nos. 23008 and 23064

In the Matter

—of the—

PETITION OF THE TEXAS COMPANY, as owner of the tanker WASHINGTON, for exoneration from or limitation of liability.

Before:

CHASE, *Chief Judge*, and SWAN and FRANK, *Circuit Judges*.

Appeal from two orders of the United States District Court for the Southern District of New York, one entered by Judge Ryan and one by Judge Weinfeld. The order of Judge Ryan is reversed; the order of Judge Weinfeld is affirmed.

Appendix.

THACHER, PROFFITT, PRIZER & CRAWLEY (Joseph M. Brush, of counsel), *for The Texas Company.*

J. EDWARD LUMBARD, United States Attorney for the Southern District of New York (Louis E. Greco, of counsel), *for the United States.*

STERLING AND SCHWARTZ (Marvin Schwartz and Betty Olchin, of counsel), *for claimants.*

On November 15, 1952, the Tanker Washington, owned by The Texas Company, collided with the U. S. S. Ruchamkin at sea near Cape Henry, Virginia. As a result, eight personal injury and death actions were filed against The Texas Company in the district court, and a libel was filed by the United States, as owner of the U. S. S. Ruchamkin in the United States District Court for the Eastern District of Virginia. The total damages sought in all these suits was $2,225,180. On April 17, 1953, The Texas Company commenced limitation proceedings in the court below and filed an *ad interim* stipulation for value in the sum of $2,109,957.58. The usual injunction order was issued against the commencement or prosecution of all suits or proceedings except in the limitation proceeding and a monition issued to all claimants to file their claims on or before June 2, 1953.

The plaintiffs in the pending suits, other than the United States, moved before Judge Ryan for modification of the injunction order, to permit the movants to proceed with their suits but reserving to the court below "the determination of the issue of exoneration from or limitation of liability." Judge Ryan, by an order dated November 17, 1953, denied the motion. He wrote an opinion reading as follows: "Petitioner, as owner of the tanker Washington has peti-

tioned for exoneration from or limitation of liability under 46 U. S. C. A. 183-9. This motion is to modify a restraining order dated April 17, 1953 which enjoined suits brought by individual claimants.

"Section 183(a) provides that 'the liability of the owner of any vessel * * * for any loss, damage, or injury by collision * * * done, occasioned or incurred, without the privity or knowledge of such owner or owners, shall not * * * exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.' Movants allege that the sum total of claims against the vessel is less than the value of it and her freight, that this Court has no jurisdiction to grant limitation of liability and consequently no power to enjoin individual actions.

"It appears, however, that the total of the claims originally made was greater than the value of the vessel, although some of these claims were reduced subsequent to the filing of the petition for limitation. The fact that claims greater than the value of the vessel and cargo were asserted gave the Court jurisdiction to entertain the petition for limitation. This jurisdiction is not divested by subsequent diminution of claims. The Tolchester, 42 Fed. 180, and The John K. Gilkinson, 150 Fed. 454. The individual suits may not be allowed to continue even for the purpose of ascertaining damages. The Tolchester.

"Supreme Court Admiralty Rule 54 provides that the petition for limitation of liability, if the vessel has not been libeled, may be brought in the district court for any district in which the owner has been sued in respect to any such claim. Eight actions have been commenced in this district. Venue has been properly laid and the restraining order was proper.

"Since I have concluded that subsequent reduction of claims does not affect jurisdiction, it will serve no useful

purpose to withhold decision on this motion pending the contemplated filing of additional stipulations of reduction.

"Motion denied."

Before Judge Weinfeld, the United States moved to transfer the libel instituted against it by The Texas Company to the United States District Court for the Eastern District of Virginia, to be there tried with the libel which the United States had there previously instituted against The Texas Company. The United States also moved to modify the injunction order so as to permit the suit in the Virginia district to go forward. There was presented to Judge Weinfeld a stipulation by the various plaintiffs, including the United States, that they had reduced their claims so that in the aggregate they amounted to $1,754,333.93.[1] It appears that these stipulations were also at some time presented to Judge Ryan.

The stipulation by the plaintiffs other than the United States stated that they would not increase the amount of their claims at any future date if The Texas Company's petition for limitation of liability were forthwith dismissed. However, in this court, on the argument of the appeal, all the claimants advised this court that they will file an amended stipulation in the district court agreeing that their claims will never be increased, that the claimants will not enter judgment in any court in excess of the stipulated amounts, and that any claim of *res judicata* relevant to the issue of limited liability, based on a judgment in any other court, is waived.

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[1] The United States stipulated that its entire claim, theretofore stated as $800,000, was $601,833.93, and that any contingent claims it had asserted for hospitalization and pensions were merely by way of set-off which would arise when and if the Texas Company should pay an injury claim and then assert such payment as part of the Texas Company's alleged claim against the United States.

Appendix.

Judge Weinfeld granted the motion of the United States. His order, dated January 29, 1954, reserved for determination by the court below, The Texas Company's right to all other relief prayed for in its limitation petition. His opinion is reported in 116 F. Supp. 915.

From Judge Weinfeld's order, The Texas Company has appealed; from Judge Ryan's order, the claimants who had moved before him for modification of the injunction have appealed.

FRANK, *Circuit Judge*:

1. The United States has moved to dismiss The Texas Company's appeal from Judge Weinfeld's order. The motion is denied. We have jurisdiction of the appeals. See *W. E. Hedger Transp. Corp.* v. *Gallotta*, 145 F. (2d) 870 (C. A. 2); *Curtis Bay Towing Co.* v. *Tug Kevin Moran, Inc.*, 159 F. (2d) 273 (C. A. 2).

2. Although the claims as originally filed exceeded the fund (or stipulated value) of $2,109,957.58, they have now been reduced by stipulation so that the fund is about $350,000 in excess of all filed claims. As a consequence, we do not have the problem of a distribution of an insufficient fund contemplated by the statute. For 46 U. S. C. §184 provides that, when loss is suffered by several persons, "and the whole value of the vessel, and her freight for the voyage, *is not sufficient to make compensation to each of them,* they shall receive compensation * * * *"in proportion to their respective losses,"* and that the limitation proceedings are "for the *purpose of apportioning the sum* * * * among the parties entitled thereto."*

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* Emphasis added.

We have several times announced the principles which we think must apply here: Absent an insufficient fund (1) the statutory privilege of limiting liability is not in the nature of a *forum non conveniens* doctrine, and (2) the statute gives a ship-owner, sued in several suits (even if in divers places) by divers persons, no advantage over other kinds of defendants in the same position. Concourse is to be granted "only when * * * necessary in order to distribute an inadequate fund."[3] The "purpose of the limitation proceedings is not to prevent a multiplicity of suits but, in equitable fashion, to provide a marshalling of assets—the distribution of an inadequate fund among claimants, none of whom can be paid in full."[4] We see nothing to the contrary in *Maryland Casualty Co.* v. *Cushing,* 347 U. S. 409, where the claims aggregated $600,000 and the Court was advised the valuation was but $25,000.

3. The Texas Company asserts, however, that the record shows there are or may be persons injured by the collision who have not yet but who may later file claims which, together with those already filed, may exceed the fund. But, as in *Curtis Bay Towing Co.* v. *Tug Kevin Moran,* 159 F. (2d) 273 (C. A. 2), on the facts here—with the maximum amount of the filed claims fixed by stipulation—there is little likelihood that other claims will be asserted before they are barred by applicable statutes of limitation or otherwise. As in that case, the district court will retain jurisdiction of the limitation proceeding, so that if, "by some chance * * * other claims should appear which will

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[3] *Curtis Bay Towing Co.* v. *Tug Kevin Moran,* 159 F. (2d) 273, 276 (C. A. 2).

[4] *Petition of Moran Transp. Corp.,* 185 F. (2d) 386, 388-389 (C. A. 2). See also *Petition of Red Star Barge Line, Inc.,* 160 F. (2d) 436 (C. A. 2); *The Aquitania,* 14 F. (2d) 456, 458, affirmed 20 F. (2d) 457 (C. A. 2).

make a concourse proper, a concourse can take over the situation as it then is * * * " Accordingly, we deem irrelevant the argument of The Texas Company as to ouster of the jurisdiction of the court below.

4. For the reasons stated in Judge Weinfelds opinion, we think his order correct.[5] It will be affirmed on the condition that the proffered amendment to the stipulation will be filed promptly in the district court. On the same condition, we reverse Judge Ryan's order.

[5] This court has heretofore dismissed the appeal from Judge Weinfeld's order transferring to the Virginia district the suit by The Texas Company against the United States.

Appendix.

Judgment of the United States Court of Appeals for the Second Circuit, Affirming the Order of the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of May one thousand nine hundred and fifty-four.

Present:

HON. HARRIE B. CHASE,
Chief Judge,

HON. THOMAS W. SWAN,

HON. JEROME N. FRANK,
Circuit Judges.

IN THE MATTER

of

Petition of the TEXAS COMPANY, as owner of the Tanker Washington, for exoneration from or limitation of liability.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is affirmed on a certain condition in accordance with the opinion of this Court.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

/s/ A. DANIEL FUSARO
Clerk

Appendix.

Judgment of the United States Court of Appeals for the Second Circuit, Reversing the Order of the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 26th day of May one thousand nine hundred and fifty-four.

Present:

HON. HARRIE B. CHASE,
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Circuit Judges.

IN THE MATTER

of

Petition of the TEXAS COMPANY, as owner of the Tanker Washington, for exoneration from or limitation of liability.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said District Court be and it hereby is reversed on a certain condition in accordance with the opinion of this Court with costs to the appellant.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

/s/ A. Daniel Fusaro
Clerk

Appendix.

Applicable Provisions of Limitation of Liability Act, 46 U. S. C. §§ 183, 184, 185.

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters or nondescript non-self propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 183 of this title. (As amended Aug. 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.)

§ 184. Apportionment of compensation. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. § 4284; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251.)

§ 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. (As amended June 5, 1936, c. 521, § 3, 49 Stat. 1480.)

United States Supreme Court Admiralty Rules.

Rule 51. Limitation of Liability—How Claimed

The owner or owners of any vessel who shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the Act of March 3, 1851, entitled "An Act to limit the liability of shipowners and for other purposes" (Sections 183 to 189 of Title 46 of the U. S. Code) as now or hereafter amended or supplemented, may file a petition in the proper District Court of the United States, as hereinafter specified. Such petition shall set forth the facts and circumstances on which limitation of liability is claimed, and pray proper relief in that

behalf. It shall also state facts showing that the petition is filed in the proper district; the voyage on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort, arising on that voyage, so far as known to the petitioner, and what suits, if any, are pending thereon; whether the vessel was damaged, lost or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If any of the above particulars are not fully known to the petitioner, a statement of such particulars according to the best knowledge, information, and belief of the petitioner shall be sufficient. With his petition the petitioner may, if he so elects, file an interim stipulation, with sufficient sureties or an approved corporate surety, for the payment into court whenever the court shall so order, of the aggregate amount of the value of petitioner's interest in the vessel at the close of the voyage or, in case of wreck, the value of the wreckage, strippings or proceeds, and of any pending freight recovered or recoverable, with interest at six per cent per annum from the date of the stipulation, and costs. If such interim stipulation is filed, it shall be accompanied by an affidavit or affidavits of a competent person or persons corroborating the statement in the petition as to value of the vessel, or her wreckage, etc., and her freight. Said court, having caused due appraisement to be had of the value of petitioner's interest in the vessel, or her wreckage, etc., and her freight shall make an order for the payment of the same into court, or for the giving of a stipulation, with sufficient sureties or an approved corporate surety, for the payment thereof into court with interest

at six per cent per annum from the date of the stipulation, whether interim or final, and costs, whenever the same shall be ordered; or, if the petitioner shall so elect, the court without such appraisement shall make an order for the transfer by the petitioner of his interest in such vessel, or her wreckage, etc., and freight to a trustee to be appointed by the court under the fourth section of said Act.

If a surrender of petitioner's interest in the vessel or her wreckage, etc., is offered to be made to a trustee, the petition must further show any prior paramount liens thereon, and what voyage or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

Upon the filing of such interim stipulation, or upon determination of value by appraisal and compliance with the court's order with respect thereto, or upon compliance with a surrender order, as the case may be, the court shall issue a monition against all persons asserting claims in respect to which the petition seeks limitation, citing them to file their respective claims with the Clerk of said court and to serve on or mail to the proctors for the petitioner a copy thereof on or before a date to be named in said writ which shall be not less than 30 days after issuance of the same, which time the court, for cause shown, may enlarge.

Notice of the monition shall be published in such newspaper or newspapers as the court by rule or order may direct in substantially the following form, once in each week for four successive weeks before the return day of the monition:

Appendix.

UNITED STATES DISTRICT COURT

DISTRICT OF

NOTICE OF PETITION FOR EXONERATION FROM OR LIMITATION OF LIABILITY

(Filed .....)

Notice is given that ..... has filed a petition pursuant to Title 46, U. S. Code, §§ 183-189, claiming the right to exoneration from or limitation of liability for all claims arising on the voyage of the vessel ..... from ..... to ..... terminating on .....

All persons having such claims must file them, under oath, as provided in United States Supreme Court Admiralty Rule 52, with the Clerk of this Court, at the U. S. Court House at ..... and serve on or mail to the petitioner's proctors ..... at ..... a copy on or before ..... or be defaulted. Personal attendance is not required.

Any claimant desiring to contest the claims of petitioner must file an answer to said petition, as required by Supreme Court Admiralty Rule 53, and serve on or mail to petitioner's proctors a copy.

.....
U. S. Marshal

The petitioner not later than the day of second publication shall also mail a copy of the above notice (copy of the monition need not be mailed) to every person known to have made any claim against the vessel or the petitioner arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice, together with a copy of Rule 52, shall be mailed to the decedent at his last-known address, and also to any person who shall be known to have made any claim on account of such death.

The said court shall also, on the application of the petitioner, make an order to restrain the further prosecution of all and any suit or suits against the petitioner and/or said vessel in respect to any claim or claims subject to limitation in the proceeding. Amended June 21, 1948.

Rule 52. Filing and Proof of Claim in Limited-Liability Proceedings

Claims shall be filed with the Clerk of the Court in writing under oath and a copy shall be served upon the proctor for the petitioner on or before the return day of the monition. Each claim shall specify the various allegations of fact upon which the claimant relies in support of his claim, the items thereof, and the dates on which the same accrued. Within thirty days after the return day of the monition or within such time as the Court thereafter may allow, the petitioner shall mail to the proctor for each claimant (or if the claimant have no proctor to the claimant himself) a list setting forth (a) the name of each claimant, (b) the name and address of his proctor or attorney (if he is known to have one), (c) the nature of his claim, *i. e.*, whether property loss, property damage, death, personal injury, etc., and (d) the amount thereof.

Whenever an interim stipulation has been filed as provided in Rule 51, any person claiming damages as aforesaid, who shall have filed his claim under oath, may file an exception controverting the value of the vessel at the close of the voyage, or, in case of wreck, the value of her wreckage, strippings or proceeds, and the amount of her pending freight, and the amount of the interim stipulation based thereon, and thereupon the court shall cause due appraisement to be had of the value of petitioner's interest in the vessel, or her wreckage, etc., and her freight; and

if the court finds that the amount of the interim stipulation is either insufficient or excessive, the court shall make an order for the payment of the proper amount into court or, as the case may be, for a reduction in the amount of the stipulation or for the giving of an additional stipulation.

Proof of all claims which shall be filed in pursuance of said monition shall thereafter be made before a commissioner to be designated by the court, or before the court as the court may determine, subject to the right of any person interested to question or controvert the same; but no objection to any claim need be filed by any party to the proceeding; and on the completion of said proofs, the commissioner shall make report, or the court its findings on the claims so proven, and on confirmation of said commissioner's report, after hearing any exceptions thereto, or on such finding by the court, the moneys paid or secured to be paid into court as aforesaid or the proceeds of said vessel, or her wreckage, etc., and freight (after payment of costs and expenses) shall upon determination of liability be divided pro rata, subject to all provisions of law thereto, appertaining, amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled. Amended June 21, 1948.

Rule 53. Rights of Owner to Contest Liability and of Claimants to Contest Exoneration from Liability or Limitation of Liability of Owner

In the proceedings aforesaid, the petitioner shall be at liberty to contest his liability, or the liability of said vessel, provided he shall have complied with the requirements of Rule 51 and shall also have given a bond for costs and

provided that in his petition he shall state the facts and circumstances by reason of which exoneration from liability is claimed; and any person claiming damages as aforesaid who shall have filed his claim under oath and intends to contest the right to exoneration or limitation, shall file an answer to such petition, and serve a copy on proctor for petitioner, and may contest the right of the owner or owners of said vessel, either to an exoneration from liability or to a limitation of liability under the said Act of Congress, or both, provided such answer shall in suitable allegations state the facts and circumstances by reason of which liability is claimed or right to limitation should be denied. Amended June 21, 1948.

Rule 54. Courts Having Cognizance of Limited Liability Procedure

The said petition shall be filed and the said proceedings had in any District Court of the United States in which said vessel has been libeled to answer for any claim in respect to which the petitioner seeks to limit liability; or, if the said vessel has not been libeled, then in the District Court for any district in which the owner has been sued in respect to any such claim. When the said vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner, the said proceedings may be had in the District Court of the district in which the said vessel may be, but if said vessel is not within any district and no suit has been commenced in any district, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any district for the convenience of the parties. If the vessel shall have already been sold, the proceeds shall represent the same for the purposes of these rules. Amended June 21, 1948.

Rule 55. Appeals in Limited-Liability Cases

All the preceding rules and regulations for proceeding in causes where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf shall apply to the circuit courts of appeals of the United States where such cases are or shall be pending in said courts on appeal from the district courts.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 200

THE TEXAS COMPANY, PETITIONER

v.

UNITED STATES OF AMERICA
and
CATHERINE BODE, as Admx., *et al.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

Two orders were entered by the United States District Court for the Southern District of New York. The opinion of District Judge Ryan has not been reported but can be found in the Blue Record (pp. 31-32), which is the Transcript of Record for the proceedings before him. The opinion of District Judge Weinfeld is reported in 116 F. Supp.

915 and is reprinted in the Gray Record (pp. 67-72), which is the Transcript of Record for the motion decided by him. The opinion of the United States Court of Appeals for the Second Circuit, dealing with both district court rulings, is reported at 213 F. 2d 479 and reproduced in the appendix to the petition (pp. 20-26).

JURISDICTION

The judgment of the Court of Appeals was entered on May 26, 1954. The petition for a writ of certiorari was filed July 8, 1954. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE AND RULES INVOLVED

The pertinent provisions of the Limitation of Liability Act of 1851 as amended, 46 U.S.C. 183-85, and United States Supreme Court Admiralty Rules 51-55 are set forth in the Appendix, *infra*, pp. 14-26.

QUESTION PRESENTED

In an admiralty proceeding to limit the liability of a shipowner to the value of his ship, after having issued the usual injunction against suit elsewhere, the court determined that the probable sum of all potential claims was less than the stipulated value of the ship.

The question presented is whether, in the circumstances of this case, there was an abuse of discretion by the court in permitting a claimant to proceed in a more convenient forum, while retaining jurisdiction over the limitation action so as to

protect the shipowner in the unlikely event that the claims subsequently exceed the ship's value.

STATEMENT

On November 14, 1952, while travelling along the Virginia coast en route to Philadelphia from the Gulf of Mexico, the Texas Company's tanker *Washington* attempted to pass through a formation of eleven United States Navy vessels. The bow of the tanker struck the port side midships of the USS *Ruckenbis*, an attack transport, aboard which were a number of Army personnel. The collision caused the death of seven soldiers, injured others, and caused serious damage to both vessels. A crew member of the tanker, in a suit against the Texas Company, also claims to have been injured. After an investigation of the damage to each vessel, the USS *Ruckenbis* put in for repairs at Norfolk, Virginia, the home base for all the ships of that formation.

Between December 10, 1952 and April 7, 1953, eight actions for personal injuries were brought against the Texas Company in the District Court for the Southern District of New York; the sum of the damages asked in the *ad damnum* clauses was $1,215,000 (Gray Record 14, 15). During this same period, on March 2, 1953, the United States brought suit as owner of the USS *Ruckenbis* in the District Court for the Eastern District of Virginia, alleging $800,000 damages.

Before answering the United States' libel in the Eastern District of Virginia, the Texas Company

filed a petition for limitation of liability in the District Court for the Southern District of New York on April 17, 1953. Upon the filing of that petition, pursuant to Rule 51 of the Admiralty Rules, *infra*, pp. 17-22, the District Court enjoined all pending or prospective actions against the Texas Company arising out of the collision with the USS *Ruchamkin* and issued a monition to all claimants to file their claims in that proceeding by June 2, 1953 (Gray Record 19-21).

Shortly thereafter, on May 6, 1953, the Texas Company filed a libel against the United States in the Southern District of New York alleging damage to the tanker *Washington* caused by negligence of the personnel of the USS *Ruchamkin* and the other vessels of the formation. The Texas Company had not filed a cross-libel in the earlier suit brought by the United States in the Eastern District of Virginia and no mention of that pending suit was made in the new libel. On motion by the United States, the case was transferred to the Eastern District of Virginia since it did not conform with the venue requirements of the Public Vessels Act. 46 U.S.C. 782.

At the same time, May 21, 1953, the United States moved to modify the restraining order entered in the limitation proceeding in New York so as to permit a determination of the relative liabilities of the vessels in the Eastern District of Virginia. While this motion was under consideration by Judge Weinfeld, on July 13, 1953, the Texas Company filed a second libel against the United States

in the Southern District of New York. This libel alleged that the venue requirements were now met since one of the allegedly negligent vessels from the formation was then in a New York port. A motion by the United States challenging venue was referred to Judge Weinfeld in conjunction with the pending issue of modifying the injunction.

Shortly after the Government's motion to modify the injunction, on May 22, 1953, eleven other claimants took similar action so that they might proceed with their suits in the forums of their choice. This motion was argued before Judge Ryan; the United States did not participate. Counsel for these claimants procured stipulations from various injured parties, including the United States, reassessing their damages to be less than originally claimed. The United States, for example, determined upon reexamination that its provable damages could not exceed $601,833.93, instead of $800,000 as originally claimed. The total effect of such stipulations was to reduce the claims filed against the Texas Company from $2,225,180.00 to $1,754,333.93. The stipulated value of the tanker *Washington* is $2,109,957.58—more than $350,000 greater than the sum of all claims now filed. Before all the stipulations were filed with Judge Ryan, he ruled against the claimants' motion on the ground that "subsequent reduction of claims does not affect jurisdiction" (Blue Record 32).

The motion of the United States, however, was granted by Judge Weinfeld, who had become aware of the Government's stipulation to reduce dam-

ages claimed. On January 29, 1954, he entered an order modifying the restraining order against the Government and directing the clerk to transfer all relevant papers to the District Court for the Eastern District of Virginia so that claims between the United States and the Texas Company could be litigated there (Gray Record 67-72). Jurisdiction over the limitation action was retained to protect the Texas Company in the unlikely event that claims should later exceed the limitation fund.

The individual claimants whose motion was denied by Judge Ryan filed an appeal from that ruling, and the Texas Company appealed from Judge Weinfeld's decision on the Government's motion. The Court of Appeals, after joint argument of the two appeals, affirmed the decision of Judge Weinfeld and reversed that of Judge Ryan. The court ruled that the restraining orders had been properly modified to permit claimants to proceed elsewhere since the probable sum of all claims is less than the stipulated value of the ship. To insure that claims would be less than the limitation fund, the ruling was conditioned on amendments to the existing stipulations providing that the claimants would never increase their claims, would never enter judgment in any court for a greater amount, and would waive any claim of *res judicata* on the issue of limited liability because of a judgment in some other court. Those amendments were filed on June 3, 1954 (Gray Record 136-8).[1] The United

[1] This reference is to the record on file with this Court.

States had previously reduced the *ad damnum* clause in its libel in the Eastern District of Virginia from $800,000 to $601,833.93 on March 1, 1954 (see *supra*, p. 5).

ARGUMENT

1. This Court has, on numerous occasions, recognized the special status accorded by the Limitation of Liability Act to shipowners, confronted by claims arising from marine disaster. *E.g., Maryland Casualty Co.* v. *Cushing*, 347 U. S. 409. Implementing a Congressional policy to induce the heavy financial commitments necessary to development of the shipping industry, the statute provides that, in proper circumstances, the shipowner's liability is limited to the value of the ship and freight pending. Under this Court's rules (Admiralty Rules 51-55), the shipowner's right to a statutory limitation is determined in a proceeding in admiralty which includes the privilege of *concursus* as to all claims against the owner.

The special privilege thus available to shipowners may encroach upon areas of protection traditionally accorded to the rights of individual claimants, for example, the right to trial by jury, access to common law remedies, choice of forum.[2] And courts hearing admiralty limitation proceedings, sitting as courts of equity, have characteristically sought to recognize rights on both sides and to avoid unnecessary conflict between the two protected areas. Cf. *Langnes* v. *Green*, 282 U. S. 531.

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[2] The famous "saving to suitors" clause is a specific recognition of these individual rights. 28 U.S.C. 1333(1).

The solution to the problem has often turned, not on abstract considerations, but on a careful consideration of the precise facts in a given controversy. *E.g., Ex Parte Green,* 286 U. S. 437.

The petition in the instant case does no more, we think, than to question a procedure worked out and applied over a long period of time by the court below, a most experienced supervisory court in the busiest admiralty district, in the practical administration of limitation proceedings. Petitioner does not urge that a shipowner has an absolute right to obtain a *concursus* by instituting a limitation proceeding without regard to the relationship between the stipulated value of the vessel and the sum of the claims against him. But petitioner does contend that the minimum amount of the claims, for the purpose of limitation, is irrevocably fixed at the total of the *ad damnum* clauses in the suits filed when the limitation proceeding is commenced.

We submit that, as illustrated by the facts in the instant case, no such vested right arises in a shipowner at the outset of the limitation proceeding. Rather, an admiralty court, in the exercise of its equitable powers, will inquire into the actual need for protection to the shipowner. That was done here. The stipulated value of the vessel was $2,109,957.58. Total claims filed, including those originally filed in independent suits, amounted to $2,225,180.00. Pursuant to binding stipulations in the courts below, total claims have been reduced to $1,754.333.93—more than $350,000 less than the stipulated value of the vessel. In view of this mar-

gin of safety,[3] the court below was unwilling to forfeit the rights of the individual claimants to proceed in their own forums. Instead, it employed its customary procedure in such cases of permitting the individual suits to go forward, while ordering the retention of the limitation proceeding on the district court docket to protect the shipowner against possible personal liability beyond the value of the ship.[4] *Curtis Bay Towing Co.* v. *Tug Kevin Moran,* 159 F. 2d 273 (C. A. 2); *Petition of Moran Transportation Corp.,* 185 F. 2d 386 (C. A. 2), certiorari denied, 340 U. S. 953; cf. *Black Diamond Steamship Corp.* v. *Robert Stewart & Sons, Ltd.,* 336 U. S. 386, 392-3.

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[3] In an apparent effort to fill in the gap thus created, petitioner emphasizes a possibility of claims by twenty other military personnel present at the scene of the collision. Putting to one side comparable statements made by petitioner below, there is no evidence in the record to justify such fears. We have been advised that sixteen of these twenty military personnel were reported as receiving "no injuries" or "mildly shaken up;" they were returned to barracks and received no medical treatment. Two received minor injuries and were treated at a naval infirmary. Only two of the allegedly outstanding claimants who have not filed were sufficiently injured to require hospitalization at a nearby naval hospital. It seems highly doubtful that the total value of all these non-filed claims could exceed $350,000.

[4] Contrary to petitioner's assertion, there has thus been no ouster of jurisdiction. Jurisdiction remains not only to protect the shipowner against unlimited liability but to resolve admiralty questions which may arise, such as those involving issues of privity and knowledge, and to provide a forum for those claimants who choose to utilize it. Moreover, the power remains to issue new injunctions, should circumstances necessitate such action. Cf. *In re Trawler Gudrun, Inc.,* 101 F. Supp. 586 (D. Mass), in which jurisdiction was relinquished.

2. Assuming that a probability of innumerable suits in scattered jurisdictions in itself would give rise to mandatory exclusive jurisdiction in the admiralty limitation proceeding, there is no such danger here. The record shows that all but one of the suits originally enjoined are in the District Court for the Southern District of New York.[5] Petitioner could thus avoid any burden of multiple litigation by moving to consolidate trial in these cases. F.R.C.P. 42(a). The only suit not brought in the Southern District of New York is the libel by the United States as owner of the other vessel. This action will involve many issues different from those in the personal injury suits so that its trial elsewhere is not prejudical to petitioner. Moreover, the existence of proceedings in two courts could hardly be described as a multiplicity of suits causing undue hardship.[6]

If, however, a large number of new suits were to be later filed subjecting the Texas Company to excessive liability or forcing defense in numerous jurisdictions, it could then seek, as we have noted above, fn. 4, *supra,* p. 9, the re-establishment of exclusive jurisdiction in the limitation proceeding. Objection at this time is premature.

3. As the matter stands, petitioner seeks to gain

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[5] See Gray Record 14-15.

[6] It should be noted that petitioner has contributed somewhat to the number of extant suits by filing its own suit against the United States in the Southern District of New York (*supra,* pp. 4-5) when a cross-libel in the Government's Virginia suit would have allowed settlement of both claims in a single court.

a major procedural advantage warranted by neither the letter nor the spirit of the Limitation of Liability Act. Though in no substantial danger of suffering expense greater than its protected maximum, petitioner insists on its right to center everything in the limitation proceeding. In this manner, petitioner would deprive the United States of a speedy trial in a convenient forum by selecting for its limitation action a jurisdiction, located far from the home ports of all ships involved, whose docket is heavily overcrowded. Petitioner would similarly deprive the other claimants of their right to trial by jury. It is for this reason that the Second Circuit developed and utilizes the procedure employed in the instant case, permitting suits elsewhere until the vessel owner is actually threatened with an improper burden, while retaining jurisdiction of the limitation action so as to fully protect the vessel owner.[7] This technique, developed and repeatedly applied by a most experienced admiralty court, is eminently fair to all parties. A contrary rule would invite spurious limitation actions to avoid claimants' right of jury trial, to delay judgment, and to make proof of claims more difficult. The limitation action would then be employed as a technique of forcing unreasonable settlements.

4. Petitioner contends that the decision below is

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[7] *E.g., Petition of Moran Transportation Corp.*, 185 F. 2d 386 (C.A. 2), certiorari denied, 340 U.S. 953; *Curtis Bay Towing Co.* v. *Tug Kevin Moran*, 159 F. 2d 273 (C.A. 2); *The Aquitania*, 20 F. 2d 457 (C.A. 2).

in conflict with rulings of the Ninth Circuit [8] and perhaps with a decision of the District Court for the Northern District of Illinois.[9] The opinions in *Anderson* v. *Alaska S. S. Co.* and *The Material Service* are perfectly consistent with the ruling of the Court of Appeals in this case. The motion denied in the *Anderson* case was for outright dismissal, not for a modification of injunctions. Moreover, the language of the opinion precludes dismissal only when potential claims at the time of the filing of the limitation action are likely to cause excessive liability. Here, of course, the total value of claims never equalled the ship's value, although that situation was not clarified until after the filing of the limitation action. The finding by the district court in the *Anderson* case that "there is a probability of claims in excess of the value of the vessel and pending freight * * *" [10] further distinguishes the result there. Cf. *Shipowners' & Merchants' Tugboat Co.* v. *Hammond Lumber Co.*, 251 Fed. 266 (C.A. 9). And, if there once was a conflict in the rules used by the Second and Ninth Circuits, that conflict has already been resolved because the Ninth Circuit now apparently adheres to the Second Circuit view. *Rice Growers Ass'n* v. *Rederiaktiebolaget Frode*, 171 F. 2d 662 (C.A. 9).[11]

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[8] *Anderson* v. *Alaska S.S. Co.*, 22 F. 2d 532 (C.A. 9).

[9] *The Material Service*, 11 F. Supp. 1006 (N.D. Ill.).

[10] See *The Victoria, Petition of Alaska S.S. Co.*, 3 F. 2d 330, 331 (W.D. Wash.).

[11] This decision does not expressly overrule the *Anderson* case, but it cites with approval the Second Circuit opinion in *Curtis Bay Towing Co.* v. *Tug Kevin Moran*, 159 F. 2d 273 (C.A. 2).

The district court decision in *The Material Service, supra,* represents the only expression on this issue from the area of the Seventh Circuit. Moreover, this decision, like the *Anderson* ruling, relies upon the existence of other claims which were not filed and which could increase the sum claimed to an amount greater than the ship's valuation. In the present case, the district court and the court below found that the total of all possible claims, filed and not filed, would in all probability fail to equal the valuation of the ship.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

SIMON E. SOBELOFF,
Solicitor General.

WARREN E. BURGER,
Assistant Attorney General.
SAMUEL D. SLADE,
Attorney.

AUGUST, 1954.

APPENDIX

1. The applicable provisions of the Limitation of Liability Act, as amended, 46 U.S.C. 181, *et seq.*, provide (as they appear in the United States Code):

§ 183. *Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel."*

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $60 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $60 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insuffi-

cient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: *Provided,* That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same

may be seagoing vessels within the meaning of such term as used in section 186 of this title. (R.S. § 4283; August 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.)

§ 184. *Apportionment of compensation.*

Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any property whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and owners of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto. (R. S. § 4284; Feb. 27, 1877, c. 69, § 1, 19 Stat. 251.)

§ 185. *Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee.*

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent

jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. (R.S. § 4285; June 5, 1936, c. 521, § 3, 49 Stat. 1480.)

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2. United States Supreme Court Admiralty Rules.

Rule 54. *Limitation of Liability—How Claimed.*

The owner or owners of any vessel who shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the Act of March 3, 1851, entitled "An

Act to limit the liability of shipowners and for other purposes" (Sections 183 to 189 of Title 46 of the U. S. Code) as now or hereafter amended or supplemented, may file a petition in the proper District Court of the United States, as hereinafter specified. Such petition shall set forth the facts and circumstances on which limitation of liability is claimed, and pray proper relief in that behalf. It shall also state facts showing that the petition is filed in the proper district; the voyage on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of lien, in contract or in tort, arising on that voyage, so far as known to the petitioner, and what suits, if any, are pending thereon; whether the vessel was damaged, lost or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If any of the above particulars are not fully known to the petitioner, a statement of such particulars according to the best knowledge, information, and belief of the petitioner shall be sufficient. With his petition the petitioner may, if he so elects, file an interim stipulation, with sufficient sureties or an approved corporate surety, for the payment into court

whenever the court shall so order, of the aggregate amount of the value of petitioner's interest in the vessel at the close of the voyage or, in case of wreck, the value of the wreckage, strippings or proceeds, and of any pending freight recovered or recoverable, with interest at six per cent per annum from the date of the stipulation, and costs. If such interim stipulation is filed, it shall be accompanied by an affidavit or affidavits of a competent person or persons corroborating the statement in the petition as to value of the vessel, or her wreckage, etc., and her freight. Said court, having caused due appraisement to be had of the value of petitioner's interest in the vessel, or her wreckage, etc., and her freight shall make an order for the payment of the same into court, or for the giving of a stipulation, with sufficient sureties or an approved corporate surety, for the payment thereof into court with interest at six per cent per annum from the date of the stipulation, whether interim or final, and costs, whenever the same shall be ordered; or, if the petitioner shall so elect, the court without such appraisement shall make an order for the transfer by the petitioner of his interest in such vessel, or her wreckage, etc., and freight to a trustee to be appointed by the court under the fourth section of said Act.

If a surrender of petitioner's interest in the vessel or her wreckage, etc., is offered to be made to a trustee, the petition must further

show any prior paramount liens thereon, and what voyage or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

Upon the filing of such interim stipulation, or upon determination of value by appraisal and compliance with the court's order with respect thereto, or upon compliance with a surrender order, as the case may be, the court shall issue a monition against all persons asserting claims in respect to which the petition seeks limitation, citing them to file their respective claims with the Clerk of said court and to serve on or mail to the proctors for the petitioner a copy thereof on or before a date to be named in said writ which shall be not less than 30 days after issuance of the same, which time the court, for cause shown, may enlarge.

Notice of the monition shall be published in such newspaper or newspapers as the court by rule or order may direct in substantially the following form, once in each week for four successive weeks before the return day of the monition:

UNITED STATES DISTRICT COURT

DISTRICT OF

NOTICE OF PETITION FOR EXONERATION FROM OR LIMITATION OF LIABILITY

(Filed .....)

Notice is given that ..... has filed a petition pursuant to Title 46, U. S. Code, §§ 183-189, claiming the right to exoneration from or limitation of liability for all claims arising on the voyage of the vessel..... from ..... to ..... terminating on .....

All persons having such claims must file them, under oath, as provided in United States Supreme Court Admiralty Rule 52, with the Clerk of this Court, at the U. S. Court House at ..... and serve on or mail to the petitioner's proctors ..... at ..... a copy on or before ..... or be defaulted. Personal attendance is not required.

Any claimant desiring to contest the claims of petitioner must file an answer to said petition, as required by Supreme Court Admiralty Rule 53, and serve on or mail to petitioner's proctors a copy.

.....

U. S. Marshal

The petitioner not later than the day of second publication shall also mail a copy of

the above notice (copy of the monition need not be mailed) to every person known to have made any claim against the vessel or the petitioner arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice, together with a copy of Rule 52, shall be mailed to the decedent at his last-known address, and also to any person who shall be known to have made any claim on account of such death.

The said court shall also, on the application of the petitioner, make an order to restrain the further prosecution of all and any suit or suits against the petitioner and/or said vessel in respect to any claim or claims subject to limitation in the proceeding. Amended June 21, 1948.

Rule 52. *Filing and Proof of Claim in Limited Liability Proceedings.*

Claims shall be filed with the Clerk of the Court in writing under oath and a copy shall be served upon the proctor for the petitioner on or before the return day of the monition. Each claim shall specify the various allegations of fact upon which the claimant relies in support of his claim, the items therof, and the dates on which the same accrued. Within thirty days after the return day of the monition or within such time as the Court thereafter may allow, the petitioner shall mail to the proctor for each claimant (or if the claimant

have no proctor to the claimant himself) a list setting forth (a) the name of each claimant, (b) the name and address of his proctor or attorney (if he is known to have one), (c) the nature of his claim, *i.e.,* whether property loss, property damage, death, personal injury, etc., and (d) the amount thereof.

Whenever an interim stipulation has been filed as provided in Rule 51, any person claiming damages as aforesaid, who shall have filed his claim under oath, may file an exception controverting the value of the vessel at the close of the voyage, or, in case of wreck, the value of her wreckage, strippings or proceeds, and the amount of her pending freight, and the amount of the interim stipulation based thereon, and thereupon the court shall cause due appraisement to be had of the value of petitioner's interest in the vessel, or her wreckage, etc., and her freight; and if the court finds that the amount of the interim stipulation is either insufficient or excessive, the court shall make an order for the payment of the proper amount into court or, as the case may be, for a reduction in the amount of the stipulation or for the giving of an additional stipulation.

Proof of all claims which shall be filed in pursuance of said monition shall thereafter be made before a commissioner to be designated by the court, or before the court as the court may determine, subject to the right of any per-

son interested to question or controvert the same; but no objection to any claim need be filed by any party to the proceedings; and on the completion of said proofs, the commissioner shall make report, or the court its findings on the claims so proven, and on confirmation of said commissioner's report, after hearing any exceptions thereto, or on such finding by the court, the moneys paid or secured to be paid into court as aforesaid or the proceeds of said vessel, or her wreckage, etc., and freight (after payment of costs and expenses) shall upon determination of liability be divided pro rata, subject to all provisions of law thereto, appertaining, amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled. Amended June 21, 1948.

Rule 53. *Rights of Owner to Contest Liability and of Claimants to Contest Exoneration from Liability or Limitation of Liability of Owner.*

In the proceedings aforesaid, the petitioner shall be at liberty to contest his liability, or the liability of said vessel, provided he shall have complied with the requirements of Rule 51 and shall also have given a bond for costs and provided that in his petition he shall state the facts and circumstances by reason of which ex-

oneration from liability is claimed; and any person claiming damages as aforesaid who shall have filed his claim under oath and intends to contest the right to exoneration or limitation, shall file an answer to such petition, and serve a copy on proctor for petitioner, and may contest the right of the owner or owners of said vessel, either to an exoneration from liability or to a limitation of liability under the said Act of Congress, or both, provided such answer shall in suitable allegations state the facts and circumstances by reason of which liability is claimed or right to limitation should be denied. Amended June 21, 1948.

Rule 54. *Courts Having Cognizance of Limited Liability Procedure.*

The said petition shall be filed and the said proceedings had in any District Court of the United States in which said vessel has been libeled to answer for any claim in respect to which the petitioner seeks to limit liability; or, if the said vessel has not been libeled, then in the District Court for any district in which the owner has been sued in respect to any such claim. When the said vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner, the said proceedings may be had in the District Court of the district in which the said vessel may be, but if said vessel is not

within any district and no suit has been commenced in any district, then the petition may be filed in any District Court. The District Court may, in its discretion, transfer the proceedings to any district for the convenience of the parties. If the vessel shall have already been sold, the proceeds shall represent the same for the purposes of these rules. Amended June 21, 1948.

Rule 55. *Appeals in Limited Liability Cases.*

All the preceding rules and regulations for proceeding in causes where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of Appeals of the United States where such cases are or shall be pending in said courts on appeal from the District Courts.

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HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1954

No. 200

THE TEXAS COMPANY,

Petitioner,

vs.

UNITED STATES OF AMERICA,

and

CATHERINE BODE, as Admx., etc., *et al.*,

Respondents.

PETITIONER'S REPLY BRIEF

JOHN C. CRAWLEY,
Counsel for the Petitioner.

THACHER, PROFFITT, PRIZER, CRAWLEY & WOOD
72 Wall Street, New York City.

Cases Cited

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Anderson v. Alaska S. S. Co., 22 F. (2d) 532 (C. A. 9, 1927) 6, 11, 12

Birks v. United Fruit Company, Inc., 48 F. 2d 656 (S. D. N. Y., 1930) 9

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Briggs v. Day, 21 Fed. Rep. 727 4

Echavarria v. Atlantic & Caribbean Steam Navigation Co., 10 F. Supp. 677 (E. D. N. Y., 1935) 9

Iafrate v. Compagnie Generale Transatlantique et al., 106 F. Supp. 619 (S. D. N. Y., 1952) 9

In re Long Island Transp. Co., 5 Fed. Rep. 599, 612 5

In re Trawler Gudrun, Inc., 101 F. Supp. 586 (D. Mass. 1951) 12

Maryland Casualty Company, et al. v. Gertrude Picard Cushing, et al., 347 U. S. 409 (1954) 11

Providence, etc. v. Hill Manuf'g Co., 109 U. S. 578, 588-599; S. C. 3 Sup. Ct. Rep. 379, 617 ..... 4, 5

Rice Growers Ass'n v. Rederiaktiebolaget Frode, 171 F. (2d) 662 (1948) 11

Shipowners' and Merchants' Tugboat Co. v. Hammond Lumber Co., 251 Fed. 266 (C. A. 9) 12

The Defender, 201 Fed. 189 (E. D. N. Y., 1912) 6

The Garden City, 26 Fed. 766, 770 (1886) 3

The George W. Fields, 237 Fed. 403 (S. D. N. Y., 1915) 6

The Hoffmans, 171 Fed. 455 (S. D. N. Y., 1909) 6

The Material Service, 11 F. Supp. 1006 (N. D. Ill. 1934) 6, 11, 12

Supreme Court of the United States

October Term, 1964

No. 310

The Texas Company,

Petitioner,

vs.

United States of America,

and

Continental Oil, et al., etc., et al.,

Respondents.

PETITIONER'S REPLY BRIEF

In its brief in opposition, the Government attempts to convey the impression that this petition involves the question of an abuse of discretion on the part of the District Judge in modifying the injunction issued in this limitation proceeding. Since, at the time of instituting this limitation proceeding, the potential claims exceeded the value of the vessel for limitation purposes, the District Judge had no discretionary right to modify the injunction.

It is not disputed by the Government or by the Court below that when this limitation proceeding was instituted the potential claims reasonably appeared to exceed the petitioner's interest in its vessel and her pending freight. In issuing the injunction in the first place, and only did the District Judge to whom the petition was presented conclude

that all of the jurisdictional facts required for the commencement of such proceedings had been presented and the venue properly laid, but another judge of the same court so stated in his opinion [Blue Record, pp. 31-32]. The petitioner having met the necessary requirements, the statute directed that "all claims and proceedings against the owner with respect to the matter in question shall cease" (Sec. 185, Title 46, U. S. Code). Consequently, the issuance of the injunction was proper, and for reasons stated in the petition herein, it should have been continued.

Despite the fact that upon the return of the monition which was issued out of the District Court, the total sworn claims then on file actually exceeded the limitation fund by more than $115,000 and there were then outstanding and unfiled twenty known potential claims for personal injuries of undetermined amounts, the Government now asserts (p. 12) in its reply brief that—

> "The total value of claims *never* equalled the ship's value, although that situation was not clarified until after the filing of the limitation action." [Emphasis added]

Again, at page 13 thereof, it is stated that the District Court and the court below *found* that the total of all possible claims filed and not filed *would in all probability* fail to equal the valuation of the ship, thus attempting to convey the impression that there was evidence submitted to support such conclusion.

In a footnote at page 9 of its brief, *without any evidence in the record to support it*, the Government makes the gratuitous statement regarding the total value of the twenty claims which had not been filed.

> "In an apparent effort to fill in the gap thus created, petitioner emphasizes a possibility of claims by twenty other military personnel present at the scene of the col-

lision. Putting to one side comparable statements made by petitioner below, there is no evidence in the record to justify such fears. We have been advised that sixteen of these twenty military personnel were reported as receiving 'no injuries' or 'mildly shaken up'; they were returned to barracks and received no medical treatment. Two received minor injuries and were treated at a naval infirmary. Only two of the allegedly outstanding claimants who have not filed were sufficiently injured to require hospitalization at a nearby naval hospital. It seems highly doubtful that the total value of all these non-filed claims could exceed $350,000."

Two of the claimants above referred to and listed by the Navy as having suffered "no injuries, mildly shaken up, and sent to barracks", to wit, Melvin Lederer and Alvin Jacobson, have filed claims for $25,000 and $30,000, respectively.

In the absence of any evidence to support these conclusions, they were and are simply "guesstimates" on the part of the Government and the court below, and the modification of the limitation injunction upon such unsupported statements is not an abuse of discretion, but, rather, the deprivation of the legal right of the petitioner given it by the statutes, the admiralty rules and the decisions of this Court. Such action is also contrary to and definitely in conflict with the decisions of other Circuits that have followed the rules laid down by this Court.

Judge Addison Brown of the Southern District, New York, an outstanding admiralty judge, stated in *The Garden City*, 26 Fed. at pages 766, 770 (1886):

> "I am of opinion that it is not necessary to aver or to prove that the claims against the vessel are in excess of her value, as a condition of the jurisdiction of the court to entertain this proceeding. Giving to

the act of 1851 the liberal construction, in furtherance of its general purpose, to which, by the rules and by the decisions of the supreme court, it is entitled, (*Providence, etc.*, v. *Hill Manuf'g Co.*, 109 U. S. 578, 588-599; S. C. 3 Sup. Ct. Rep. 379, 617,) its objects are seen to be twofold: *First*, to fix a definite limitation of liability; *second*, to provide for the payment, *pro rata*, of all claims to the extent of the value of the vessel and freight. As an incident of the first object, the supreme court has, by the fifty-sixth rule in admiralty, expressly provided that the petitioners in this proceeding may contest all liability for the alleged loss, may have that point adjudicated before this court, and, if successful in establishing that defense, may have a decree exempting them from all liability whatsoever. *Providence, etc.* v. *Hill, etc.*, 109 U. S. 592, 595; S. C. 3 Sup. Ct. Rep. 379, 617. Section 4285, moreover, expressly declares that it shall be 'a sufficient compliance on the part of the owner with the requirements of this title relating to his liability,' etc., 'if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee,' etc., 'from and after which transfer all claims and proceedings against the owner shall cease.' Here is no qualification or condition that the claims shall be averred to exceed the value of the vessel. If such an averment is essential to jurisdiction, it would seem essential that it should be proved; which is certainly not the case, since the vessel may be adjudged not liable at all. It occasionally happens that no claims whatever are proved, and sometimes a surplus has arisen, where the claims were less than the proceeds of the vessel sold; but it has never been contended that the decrees in such cases were void. *Briggs* v. *Day*, 21 Fed. Rep. 727. It is often impracticable, moreover, for the petitioners to know or to ascertain just what the amount of the losses is. It would clearly defeat

the purpose of this law if all proceedings must be delayed, and no petition could be filed, until claims were actually *presented* to the owners in excess of the value of the vessel; or if the owners of the vessel must first make sure that the amount of the actual demands against them was in excess of the value of the vessel.

"As stated above, one of the clear purposes of the law is to fix and declare a certain limit of liability; and, as incident to this, to determine whether the vessel is liable at all, and to determine this in a single proceeding, and not leave it to be litigated and possibly determined in contrary ways in as many different suits as there may be different demands. *Providence, etc. Co.* v. *Hill Manuf'g Co.*, 109 U. S. 593-595; S. C. 3 Sup. Ct. Rep. 379, 617; *In re Long Island Transp. Co.*, 5 Fed. Rep. 599, 612. Owners should be held entitled to commence these proceedings with reasonable promptness, in order to determine whether they are liable at all, and, if liable, then the extent of that liability, so that they may know speedily their situation as respects the future. The supreme court, in providing by rule for the determination of both these questions in this proceeding, clearly recognize, as it seems to me, the scope of this law as extending altogether beyond the mere adjustment of *pro rata* dividends in case of deficiency."

And again at page 772:

"Doubtless a single claim less than the value of the vessel would be insufficient to sustain the proceeding. For in that case no purpose would be subserved by the special proceeding that would not be equally available by way of defense in an ordinary suit; and it is not to be presumed that congress intended in such a case to take away trial by jury. But when the loss or accident is one that by its nature, as in this case, involves injury to many persons, and the amount that

> each may claim is unknown and unascertainable, and several actions at law are already commenced, the case is in my opinion within the general intent of the act and of the supreme court rules to obtain in a single proceeding a binding and final adjudication both as to the fact of any liability at all, and, if any, the extent of that liability, and a speedy distribution to those entitled to a recovery."

This reasoning was followed in *The Defender*, 201 Fed. 189 (E. D. N. Y., 1912), *The George W. Fields*, 237 Fed. 403 (S. D. N. Y., 1915) and *The Hoffmans*, 171 Fed. 455 (S. D. N. Y., 1909). See also *Anderson* v. *Alaska S. S. Co.*, 22 F. (2d) 532 (C. A. 9, 1927) and *The Material Service*, 11 F. Supp. 1006 (N. D. Ill. 1934) cited in the petition herein at pages 7 and 8.

This Court, in *Black Diamond Steamship Corp.* v. *Robert Stewart & Sons Ltd.*, 336 U. S. 386, 392, 393 (1949), stated that where the potential claims exceed the owner's interest in the vessel and her pending freight, a limitation proceeding under the statute is properly invoked.

Before the Sirovich Amendment to the Limitation statute in 1936, therefore, a shipowner was not required to establish the value of claims, but only the probable existence of claims exceeding the owner's interest in the vessel and her pending freight. Since the Sirovich Amendment, among other things, compels a shipowner to institute limitation proceedings within six months after receiving written notice of claim, or waive its right thereto, there is all the more reason why an admiralty court should continue to adhere to the aforesaid rule regarding "potential claims". Only a trial court or jury has the authority to determine the *value* of a claim, and until, after hearing the evidence, the value thereof is thus determined, any other opinion, especially when not based upon evidence, can only be a guess and therefore a speculative ground for

denying a shipowner its one hundred-year-old statutory right to a concourse and determination of its freedom from fault or liability in a single proceeding.

Perhaps because it and not the Government is obliged to defend such suits, the petitioner is not as sanguine as the Government with respect to the prospective amount or value of the twenty unfiled claims herein. Unless the Government is willing to guarantee the maximum amount of the twenty unfiled claims, speculative conclusions as to the amounts thereof should not deprive the petitioner of its properly instituted limitation proceeding.

The Government emphasizes the fact that the Second Circuit's opinion in the case at bar permits the District Court to retain the limitation proceeding on its docket (Brief, p. 9). It points out that there has been no ouster of jurisdiction (Brief, p. 9, footnote 4). But the problem is one of continuing exclusive jurisdiction on the part of the District Court, sitting as a court of admiralty for a single trial and determination of petitioner's liability if any. The opinion of the Second Circuit destroys the exclusive jurisdiction contemplated by the Limitation of Liability Act, and, as pointed out herein, opens the floodgates to a multiplicity of suits. Little is accomplished by issuing a new injunction, after petitioner has already been subjected to several separate trials of a complicated maritime collision, such as this one, involving twelve vessels. Such proceeding is hardly an economical disposition for the claimants or the shipowner. The Government's contention that objection at this time is premature (Brief, p. 10) is, therefore, without merit.

The Government's statement at page 10 of its brief that the libel of the United States filed in Alexandria, Va., is the only suit that was not brought in the Southern District of New York is factually incorrect. Romolo Pompa, as ad-

ministrator of Pasquale Pompa, deceased, has commenced a civil action in the United States District Court for the Eastern District of Pennsylvania against The Texas Company, demanding a jury trial (Civil Action File No. 16011); and has also filed a libel, in admiralty, *in personam* against The Texas Company in the United States District Court for the Eastern District of Pennsylvania (Admiralty No. 457 of 1953).

Also, the Government is incorrect in its statement that its action against The Texas Company will involve many issues different from those involved in the personal injury suits. A determination of the liability of the vessels involved and their respective owners, for the collision, if made in the limitation proceeding, would bind all claimants, including the Government and also the petitioner; whereas a decision of the U. S. District Court at Alexandria as to which of the twelve vessels were at fault for the collision, rendered in the suit of the United States against The Texas Company, will have no binding legal effect upon the personal injury and death claims pending in the Southern District of New York.

Because of the possible cross liability of the Government for the injury and death claims, its suit in Alexandria cannot be finally determined until the conclusion of all other suits or claims (see petition p. 18).

The Government suggests that the petitioner should move to consolidate the actions commenced in the Southern District of New York, pursuant to F. R. C. P. 42(a). That rule makes it discretionary with the trial judge whether consolidation should be granted. As has been previously mentioned, counsel for plaintiffs in eleven of the personal injury suits will undoubtedly oppose such consolidation. Because claims involving more serious injuries would then be tried with the minor ones, it would be prejudicial for the petitioner to consent to such consolidation.

In the case of a maritime disaster, where the conditions of the Limitation of Liability Act have been complied with, there should be only one trial. To try a collision case more than once is to impose unnecessarily on the Court's time and on the time of the witnesses and counsel. A simple solution that would resolve all objection to a multiplicity of actions and, at the same time, meet the Government's desire for a trial in a convenient forum, is provided in Admiralty Rule 54 of this Court. Assuming that it could establish that Norfolk, Va., would be more convenient for its witnesses as the place of trial, a transfer under that Rule would have been binding upon everyone, including the unfiled claimants because of the *in rem* nature of the limitation proceeding. In making the particular motion that it did, the Government apparently feared the opposition of the injury and death claimants to any attempt to shift the trial of their cases to Virginia. The fact that the injury and death claimants have not offered as yet to be bound by the decision of the District Court in Alexandria, Va., permits of no other conclusion than that they will insist upon remaining in the Southern District of New York for separate trials unless the limitation injunction is continued.

It may be stated parenthetically that the seven death claimants are not entitled to jury trials:

> *Iafrate* v. *Compagnie Generale Transatlantique et al.*, 106 F. Supp. 619 (S. D. N. Y., 1952);
> *Birks* v. *United Fruit Company, Inc.*, 48 F. 2d 656 (S. D. N. Y., 1930);
> *Echavarria* v. *Atlantic & Caribbean Steam Navigation Co.*, 10 F. Supp. 677 (E. D. N. Y., 1935).

Consequently, the disposition of the court below benefits only three of forty possible claimants, aside from the Government, since only three injury claimants have filed the necessary stipulations required by the Court of Appeals

below. It will also be necessary for the admiralty court to continue with the trial and disposition of the limitation proceeding for the benefit of those claimants who have not filed the required stipulation and have indicated a desire to remain in the admiralty court for a trial and determination of the merits of their claims.

It is difficult to comprehend the Government's contention at page 11 of its brief that a limitation of liability proceeding makes proof of claims more difficult. Contrary to the Government's assertion, if there is, in fact, any difference, one would expect that a trial in admiralty as to liability and damages would be less technical than a jury trial.

It should be noted that only six personal injury or death claimants and the United States of America, out of a total of 21 who have filed claims, have filed a stipulation reducing their claims and agreeing never to demand more than the reduced amount. Yet, in the opinion of the Court of Appeals, the following statement appears:

> "But, as in Curtis Bay Towing Co. v. Tug Kevin Moran, Inc., 2 Cir., 159 F. (2d) 273, on the facts here—with the maximum amount of the filed claims fixed by stipulation—there is little likelihood that other claims will be asserted before they are barred by applicable statutes of limitation or otherwise."

The Record demonstrates that this statement is erroneous because there are fourteen filed claims which have not been included in or covered by the stipulation. There is nothing to prevent any of those fourteen claimants from amending their claims so as to increase their demand for damages. In that manner, the limitation fund could readily be exceeded, despite the stipulation placing a ceiling on the other seven filed claims.

It is significant that the Government's brief does not rely upon any of the recent decisions of this Court to sup-

port its contention. Rather, it places its reliance on decisions of the Second Circuit, although it is apparently aware that they are not in harmony with the language of this Court in *Black Diamond Steamship Corp.* v. *Robert Stewart & Sons, Ltd.*, 336 U. S. 386, 392-393 and they involved factual situations where all claims were filed or it was clear that they could not possibly exceed the limitation fund (Brief, p. 9). The petition makes it clear that the language of the United States Supreme Court in several of its opinions, and especially in the *Black Diamond* case and *Maryland Casualty Company, et al.* v. *Gertrude Picard Cushing, et al.*, 347 U. S. 409 (1954), runs contrary to the views expressed by the Second Circuit on the Limitation of Liability Act (Petition, pp. 12-19).

The Government argues that the Ninth Circuit in *Rice Growers Ass'n* v. *Rederiaktiebolaget Frode*, 171 F. (2d) 662 (1948), refused to follow its earlier decision in *Anderson* v. *Alaska S. S. Co.*, 22 F. (2d) 532 (1927). There is no basis for that contention. The issue in the *Rice Growers* case was whether the decision of the District Court determining the amount of the limitation fund was appealable. The U. S. Court of Appeals for the Ninth Circuit held that it was appealable. The *Anderson* case is nowhere cited in the opinion; the fact situations were entirely different. In the *Rice Growers* case there were only two claims, and as the Court pointed out, page 633: "All other claims were defaulted".

The Government also contends, at page 12 of its brief, that the decision in the *Anderson* case and the *Material Service* case is consistent with the decision in the case at bar. The *Anderson* case, contrary to the Government's assertion, involved a consideration of the correctness of an order denying appellant's motion to dismiss the limitation petition and dissolve the restraining order. A reading of the opinion in the *Anderson* case makes it clear that it is utterly opposed to the views of the Second Circuit in the

case at bar. The same is true of the *Material Service* case (11 F. Supp. 1006, 1007).

The Government asks this Court, at page 12 of its brief, to contrast *Shipowners' and Merchants' Tugboat Co.* v. *Hammond Lumber Co.*, 251 Fed. 266 (C. A. 9), with the *Anderson* case. That case was decided nine years before the *Anderson* case and involved only a *single claim*, and hence is not applicable to the problem presented by a multiplicity of suits.

With respect to *In re Trawler Gudrun, Inc.*, 101 F. Supp. 586 (D. Mass. 1951), cited at page 9 of the Government's brief, in footnote 4, it need only be said that there is nothing in the opinion to indicate that there were any potential unfiled claims. The claims were definitely less than the limitation value.

Conclusion

It is therefore respectfully submitted that the Government's objections to the allowance of the writ are without merit and that the petition should be granted.

September, 1954.

JOHN C. CRAWLEY,
Counsel for Petitioner.